(3)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR (C.G.)

WRIT PETITION NO.3178 /2006 **SINGLE BENCH**

PETITIONER

Ram Bhajan Patel, son of Shri Parath Ram Patel, aged about 62 years, Principal, Government Higher Secondary School, Sondka, Block Kharsia, Raigarh (Chhattisgarh)

P.R. No. 3233/06
Presented by Shri A. Tripathi
dated 29/6/06

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through – the Secretary, Department of Scheduled Caste and Scheduled Tribe Development, Dau Kalyan Singh Bhawan, Raipur (C.G.)

2. The Commissioner, Department of Scheduled Caste and Scheduled Tribes, D.K.S. Bhawan, Raipur (C.G.)

3. The Assistant Commissioner, Department of Scheduled Caste and Scheduled Tribes, Raigarh (Chhattisgarh)

4. The Collector, Distt. Raigarh (Chhattisgarh)

5. Ramashankar Singh, through - The Commissioner, Department of Scheduled Caste and Scheduled Tribes, D.K.S. Bhawan, Raipur (C.G.)

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6. N.K. Sharma, through - The Commissioner, Department of Scheduled Caste and Scheduled Tribes, D.K.S. Bhawan, Raipur (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

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(35)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Writ Petition No. 3178/2006**

**Petitioner** : Ram Bhajan Patel

Vs.

**Respondents** : State of Chhattisgarh & others

**Single Bench : Hon'ble Shri Satish Kumar Agnihotri, J.**

**PRESENT**: -

Shri B.D. Guru, Counsel for the petitioner.

Smt. Anju Ahuja, Deputy Govt. Advocate for the State.

**O R D E R**

(Passed on 30-10-2006)

The petitioner was initially appointed on the post of Upper Division Teacher on 7.3.1968 in the Tribal Welfare Department. According to the petitioner, respondents No. 5 and 6, who were appointed as Upper Division Teachers subsequently on 9.12.1968 and 18.12.1969 respectively, got promotion to the post of Lecturers on 21.9.1984. The Gradation List was accordingly published on 15.7.1994 as on 1.4.1994 (Annexure P-1) wherein the date of birth of the petitioner was shown as 8.5.1934 and the actual date of birth of the petitioner is 25.7.1944. The petitioner submitted representation for correction of his date of birth on 16.8.1995 (Annexure P-2). One more representation was sent on 2.11.1995 (Annexure P-3). No decision was taken on the said representations. According to the petitioner, respondents No. 5 and 6, who were appointed as Upper Division Teachers subsequently, got promoted on the post of lecturers before the

petitioner and they were further promoted on the post of Principal by order dated 28.2.1994 and 16.9.1995 on the basis of the gradation list. The petitioner was promoted ultimately on 31.7.2000 on the post of Principal. The petitioner has filed this petition after a period of six years on 27.6.2006 seeking a relief of direction to the respondents No. 1 to 4 for correction of the gradation list and for further grant of promotion to the petitioner from the date when the persons junior to him have been granted promotion with all consequential benefits.

2. This petition has been filed after a long inordinate and unexplained delay of six years. The petitioner has not been able to produce or submit any reason for condonation of such a long delay in filing this petition.

3. It is well settled that High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic as the belated approach may have the effect of inflicting not only hardship as inconvenience but also injustice on third parties.

4. The Supreme Court in **Jagdish Narain Maltiar Vs. The State of Bihar & others**[1] observed as under:

> "Thus it was in August, 1963 that the appellant discovered that his services were really determined for gross misconduct. For

[1] AIR 1973 SC 1343

> nearly 3 years thereafter he kept on submitting one memorandum after another to the Government and it was not until late in 1966 that he filed a Writ Petition in the High Court to challenge the order of removal. The memorials presented by him to the Government were in the nature of mercy petitions and he should have realized that in pursuing a remedy which was not duly appointed under the law he was putting in peril a right of high value and significance. By his conduct he disabled the High Court from exercising its extraordinary powers in his favour. We are therefore of the opinion that the High Court was justified in refusing to entertain the petition."

5. The Supreme Court in **P.S. Sadasivaswamy Vs. State of Tamil Nadu**[2]observed as under:

> "It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

6. The Supreme Court in **State of M.P. & others Vs. Nandlal Jaiswal and others**[3]further observed as under:

> "Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution

[2] AIR 1974 SC 2271
[3] (1986) 4 SCC 566

> of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasized time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal."

7. The Supreme Court in **Burn Standard Co. Ltd. & others Vs. Dinabandhu Majumdar & another**[4] also observed as under :

> "The very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches."

8. The Supreme Court in **Karnataka Power Corporation Ltd. through its Chairman & Managing Director & another Vs. K. Thangappan & another**[5] observed as under:

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[4] (1995) 4 SCC 172
[5] (2006) 4 SCC 322

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> "Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad V. Chief Controller of Imports and Exports. Of course, the discretion has to be exercised judicially and reasonably."

9. In the present case, the cause of action arose for the first time on 21.9.1984 when respondents No. 5 and 6 were promoted on the post of lecturer as according to the petitioner, the respondents No. 5 and 6 were junior on initial appointment as Upper Division Teachers. Thereafter, they were again promoted on 28.2.1994 and 16.9.1995 on the post of Principal, when the second cause of action arose. The petitioner in the present petition is claiming seniority on all the posts immediately above his alleged junior respondents No. 5 and 6. The petitioner has not taken any steps since 21.9.1984 till date and remained tardy and indolent. This belated approach would certainly cause hardship and inconvenience to others whose rights have been settled long back.

10. As a result, for the aforesaid reasons, the petition is dismissed as not maintainable on the ground of delay in approaching this Court.

Sd/-
Satish K. Agnihotri
Judge

Kvr